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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROBERT THORNAL,

Plaintiff,

v.

JIM PITTS, in his individual and official
capacities; RON SUPP, in his individual and
official capacities; ELKO COUNTY
SHERIFF'S OFFICE, a governmental entity,
and ELKO COUNTY, a governmental entity,

Defendants.

Case No. 3:19-cv-00358-LRH-WGC

ORDER

Defendant Elko County Sheriff's Office has filed a motion to dismiss the complaint of plaintiff Robert Thornal. (ECF No. 11). No other defendant joined in the Sheriff's Office's motion to dismiss. Thornal filed a response (ECF No. 16), and the Sheriff's Office timely replied (ECF No. 17). For the reasons stated below, the Court will grant the motion to dismiss.

I. Factual Background and Procedural History

This is a wrongful termination action. According to the factual allegations within his complaint, which are presumed to be true for the purposes of this motion, Thornal was fired from his position as a sheriff's deputy after testifying for the plaintiff in a civil rights action brought against Elko County. (ECF No. 1 at 5). He also alleged that his firing stemmed from the fact that he supported defendant Jim Pitts's opponent in the 2018 Elko County Sheriff election and was fired shortly before Pitts's term was set to end. (*Id.* at 7–8). Thornal also claims that his race (Native American) played a factor in his termination. (*Id.* at 13). Following the filing of his complaint on

1 June 26, 2019, the Sheriff's Office brought the instant motion to dismiss on August 9. (ECF No.
2 11).

3 II. Legal Standard

4 Although the Sherri's Office does not state the applicable legal standard in its motion, the
5 Court will construe it as seeking dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6)
6 for failure to state a claim upon which relief can be granted. To survive a motion to dismiss for
7 failure to state a claim, a complaint must satisfy Federal Rule of Civil Procedure 8(a)(2)'s notice
8 pleading standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir.
9 2008). That is, a complaint must contain "a short and plain statement of the claim showing that the
10 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not
11 require detailed factual allegations; a pleading, however, that offers " 'labels and conclusions' or
12 'a formulaic recitation of the elements of a cause of action' " will not suffice. *Ashcroft v. Iqbal*,
13 556 U.S. 662, 677 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

14 Furthermore, Rule 8(a)(2) requires a complaint to "contain sufficient factual matter,
15 accepted as true, to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 556 U.S. at 667
16 (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual
17 content allows the court to draw the reasonable inference, based on the court's judicial experience
18 and common sense, that the defendant is liable for the misconduct alleged. *Id.* "The plausibility
19 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that
20 a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with
21 a defendant's liability, it stops short of the line between possibility and plausibility of entitlement
22 to relief. *Id.*

23 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as
24 true. *Iqbal*, 556 U.S. at 667. Even so, "bare assertions. . .amount[ing] to nothing more than a
25 formulaic recitation of the elements of a . . .claim. . .are not entitled to an assumption of truth."
26 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 681)
27 (brackets in original) (internal quotation marks omitted). The court discounts these allegations
28 because "they do nothing more than state a legal conclusion—even if that conclusion is cast in the

1 form of a factual allegation.” *Id.* (citing *Iqbal*, 556 U.S. at 681.) “In sum, for a complaint to survive
2 a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that
3 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.*

4 **III. Discussion**

5 The Sheriff’s Office’s motion to dismiss straightforwardly asserts one ground for dismissal
6 – that under Nevada law, it cannot be sued because it is not a suable “political subdivision” under
7 Nevada law. (ECF No. 11 at 2). It points to *Wayment v. Holmes*, a 1996 case from the Nevada
8 Supreme Court, arguing that it expressly held that departments of counties (such as sheriff’s offices
9 and district attorney’s offices) cannot be sued. In response, Thornal argues that subsequent caselaw
10 has abrogated *Wayment* and that the Sheriff’s Office has waived immunity from suit by frequently
11 appearing as the plaintiff in civil asset forfeiture actions in Nevada state court. (ECF No. 16 at 4,
12 9). The Court will begin its analysis by surveying the relevant Nevada caselaw and statutes.

13 In *Wayment v. Holmes*, a former deputy district attorney sued Washoe County, the Washoe
14 County District Attorney’s Office, and two individuals working for the office for tortious discharge
15 after he was fired for pointing out errors his supervisor had made in drafting an indictment. 912
16 P.2d 816, 817–18 (Nev. 1996). The Nevada Supreme Court held that the District Attorney’s Office
17 was not a suable entity because it was a department of Washoe County, not an independent political
18 subdivision. *Id.* at 819. It noted that “in the absence of statutory authorization, a department of the
19 municipal government may not, in the departmental name, sue or be sued.” *Id.* (quoting 64 C.J.S.
20 *Municipal Corporations* §2195 (1950)). *Wayment* has not been abrogated by any subsequent cases
21 from the Nevada Supreme Court and remains the law of the state. Therefore, to maintain his action
22 against the Sheriff’s Office, Thornal must point to some form of statutory authorization that allows
23 the Sheriff’s Office to sue or be sued directly.

24 Thornal first argues that although sheriff’s offices are not defined as “political
25 subdivisions” in NEV. REV. STAT. §41.0305, neither are counties, and it is axiomatic that counties
26 may be sued. (ECF No. 16 at 7). As such, according to the argument, that statute does not prohibit
27 sheriff’s offices from being sued. NEV. REV. STAT. §41.0305 is the statute wherein the State of
28 Nevada waived absolute immunity from suit for both itself and its “political subdivisions.”

1 Although not defined in that section, “political subdivisions” are defined in NEV. REV. STAT.
2 §41.0305 as follows:

3 [T]he term “political subdivision” includes an organization that was officially
4 designated as a community action agency pursuant to 42 U.S.C. § 2790 before that
5 section was repealed and is included in the definition of an “eligible entity”
6 pursuant to 42 U.S.C. §9902, the Nevada Rural Housing Authority, an airport
7 authority created by special act of the Legislature, a regional transportation
8 commission and a fire protection district, an irrigation district, a school district, the
governing body of a charter school, any other special district that performs a
governmental function, even though it does not exercise general governmental
powers, and the governing body of a university school for profoundly gifted pupils.

9 42 U.S.C. §9902 had defined a “community action agency” as one with the power to enter into
10 contracts, receive and administer funds, and delegate powers to other agencies. *Schneider v. Elko*
11 *County Sheriff’s Dept.*, 17 F.Supp.2d 1162, 1164 (D. Nev. 1998).

12 This is not the first time that this Court has faced the issue of whether a sheriff’s office may
13 be sued under Nevada law. In *Schneider*, the plaintiff brought an excessive force action under
14 §1983 directly against the Elko County Sheriff’s Office following a conviction for obstruction of
15 justice. 17 F.Supp.2d at 1164. This Court dismissed the plaintiff’s action against the sheriff’s office
16 because such an entity does not have the statutory power to tax or otherwise receive and disburse
17 funds, enter into contracts, or to delegate power to other agencies. *Id.* (citing NEV. CONST. ART. 4,
18 §32; NEV. REV. STAT. §248.010). The only exception can be found in NEV. REV. STAT. §41.0336,
19 which states that a “law enforcement agency” is not liable for the negligence of its officers unless
20 (1) an officer made a promise subsequently relied on by the plaintiff or (2) the officer affirmatively
21 caused the plaintiff’s injury. A straightforward application of *Schneider* immediately ends any
22 claims that Thornal has directed at the Sheriff’s Office.

23 Thornal attempts to distinguish *Schneider* by pointing to a 2001 Ninth Circuit case, *Streit*
24 *v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001). (ECF No. 16 at 9). There, the plaintiff
25 sued the Los Angeles County Sheriff’s Department under 42 U.S.C. §1983 alleging over-
26 detention. *Id.* at 556. The Ninth Circuit held that under California law, *inter alia*, the sheriff’s
27 department could be sued in addition to Los Angeles County itself. *Id.* at 565. But the facts of this
28 case are readily distinguishable from the facts of this case. The central issue in *Streit* was whether

1 the L.A. County Sheriff's Department acted on behalf of L.A. County, thereby opening the county
2 to liability under §1983 and *Monell*. *Id.* at 555. Whether the sheriff's department could be
3 separately sued was an ancillary issue. There is no question here whether Elko County can be sued
4 – it can be. The key distinction between these two cases is that the Ninth Circuit reached its
5 decision on the suability of the sheriff's department by analyzing California statutes and case law.
6 *Id.* at 565–66. It noted that whether or not the police department could be sued in federal court had
7 to be determined by the law of the police department's state. *Id.* (citing *Shaw v. California Dep't*
8 *of Alcoholic Beverage Control*, 788 F.2d 600, 604 (9th Cir. 1986)). Whether a California sheriff's
9 office can be sued pursuant to California law does not have any bearing on whether a Nevada
10 sheriff's office can be sued pursuant to Nevada law.

11 Following *Streit*, this Court has consistently reapplied *Schneider*. *See, e.g., Schmitt v. Lyon*
12 *County Sheriff*, 2017 WL 2743400 (D. Nev. June 26, 2017) (recommending that the district judge
13 dismiss the plaintiff's action against the Lyon County Sheriff's Office because it “is not a proper
14 defendant”); *McQueen v. Nye County Sheriff's Office, Nev.*, 2015 WL 4724568 (D. Nev. June 5,
15 2015) (recommending that the district judge dismiss the plaintiff's action against the Nye County
16 Sheriff's Office because it lacked the capacity to be sued), *adopted by* 2015 WL 4734929 (D. Nev.
17 Aug. 201, 2015); *Wampler v. Carson City Sheriff*, 2012 WL 3205943 (D. Nev. Aug. 3, 2013)
18 (dismissing action against the Carson City Sheriff's Office pursuant to *Schneider* and *Wayment*);
19 *Cerros v. North Las Vegas Police Dep't.*, 2008 WL 608641 (D. Nev. Feb. 29, 2008) (same). In
20 fact, many of these cases cite directly to *Streit*, demonstrating that this Court has repeatedly
21 considered *Streit*'s holding but correctly determined that it did not apply to Nevada sheriff's
22 departments. Thornal's argument that *Streit* somehow abrogated *Schneider* is without merit.

23 Thornal also argues that because the Sheriff's Office has appeared as the named plaintiff
24 in several forfeiture actions in Nevada state court, it has waived its immunity from suit. (ECF No.
25 16 at 4). This argument rests on a misunderstanding of the nature of asset forfeiture actions. Under
26 Nevada law, the plaintiff in a civil forfeiture action must be “the law enforcement agency which
27 has commenced” the proceeding. *Levingston v. Washoe County, By and Through Sheriff of Washoe*
28 *County*, 956 P.2d 84, 87 (Nev. 1998); NEV. REV. STAT. §179.1159. The fact that the Sheriff's


1 Office has been listed as the plaintiff in forfeiture actions as required by a statute (and the only
2 possible plaintiff in such actions) does not equate to it waiving its immunity from suit. The only
3 entity that can waive the Sheriff's Office's immunity from suit is the Nevada legislature by way
4 of statute.

5 **IV. Conclusion**

6 IT IS THEREFORE ORDERED that the motion to dismiss (ECF No. 17) filed by
7 defendant Elko County Sheriff's Office is **GRANTED**. Said defendant is dismissed from this case
8 **WITH PREJUDICE**.

9 IT IS SO ORDERED.

10 DATED this 17th day of December, 2019.

11 
12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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